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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,014	12/08/2003	Luc Nicolas-Morgantini	06028.0034-00	9097
22852	7590	07/27/2006		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/729,014	<b>Applicant(s)</b> NICOLAS-MORGANTINI ET AL.	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-20 and 26-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20 and 26-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1 This action is responsive to the amendment filed on June 2, 2006.

2 The cancellation of claims 7 and 21-25 is acknowledged. Pending claims are 1-6, 8-20  
and 26-92.

3 Claims 1-6, 8-20, 26-30 and 42-92 stand rejected under 35 U.S.C. 103(a) as being  
unpatentable over Cottard et al. (US' 514 A1) in view of Sokol et al. (US' 326) for the reasons  
set forth in the previous office action mailed on December 5, 2005.

4 Claims 31-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et  
al. (US' 514 A1) in view of Sokol et al. (US' 326) and further in view of Laurent et al. (US' 431  
A1) for the reasons set forth in the previous office action mailed on December 5, 2005.

#### ***Response to Applicant's Arguments***

5 Applicant's arguments filed 6/2/2006 have been fully considered but they are not  
persuasive.

With respect to the rejection of claims 1-6, 8-20, 26-30 and 42-92 under 35 U.S.C. 103(a)  
as being unpatentable over Cottard et al. (US' 514 A1) in view of Sokol et al. (US' 326),  
Applicant argues that there is no motivation to combine the references.

The examiner respectfully disagrees with the above arguments because the use of patents  
as references is not limited to what the patentees describe as their own inventions or to the  
problems with which they are concerned. They are part of the literature of the art, relevant for all  
they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983)  
(quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a  
reference may be relied upon for all that it would have reasonably suggested to one having

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ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In this particular case, Cottard et al. (US' 514 A1) suggests the use of the genus anionic surfactants of alkyl sulfates in the hair dyeing formulation (see page 16, paragraph, 0321). It is further taught by Cottard et al. (US' 514 A1) that anionic surfactants can be chosen from fatty acid salts such as salts of oleic acid, and stearic acid (see page 16, paragraph, 0322). Sokol et al. (US' 326) as a secondary reference in analogous art, teaches clearly the anionic surfactant of the claimed species sodium myristyl sulfate as a dispersing agent to accelerate the dispersing of the dyeing ingredients in the composition (see col. 4, lines 59-62). Therefore, there is a clear suggestion and sufficient modification to one having ordinary skill in the art to be motivated to incorporate the anionic surfactant of alkyl sulfate (myristyl sulfate) as taught by Sokol et al. in the dyeing composition of Cottard et al. to arrive at the claimed invention with the reasonable expectation of success that any of the species of the genus would have similar properties and also for accelerating the dispersing of the dyeing ingredients and would expect such a composition to have similar properties to those claimed in the absence of contrary. Therefore, the prima facie case of obviousness has been established.

With respect to the applicant's argument about the rejection of weight ratios, the examiner would like to point out that as the optimization of results, a patent will not be granted based upon the optimization of result effective variable when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness, see *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F. 2d 1575, 1578, 16 USPQ2d 1934, 1936-37

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(Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Further, applicant has not shown on record the criticality of the claimed ratio of alkyl sulfate and the associative polymers in the claimed composition.

With respect to the rejection of claims 31-41 under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US' 514 A1) in view of Sokol et al. (US' 326) and further in view of Laurent et al. (US 2002/0023514 A1), Applicant argues that there is no motivation to combine the references.

The examiner respectfully disagrees with the above arguments for the same reasons mentioned above.

6      **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

July 24, 2006